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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CONT.CAS(C) 970/2018 & CM APPL. 44540/2019**

NARENDRA YADAV

..... Petitioner

Through: Mr. Barun Kumar Sinha with Ms.
Pratibha Sinha and Mr. Sneh
Vardhan, Advocates.
(M): 9711401792

versus

DILIP RANGWANI AND ANR.

..... Respondents

Through: Mr. V.N. Koura with Mr. Paramjeet
Benipal, Advocates.
(M): 9810037778
Email: admin@kouraco.com

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

16.04.2024

MINI PUSHKARNA, J:

1. The present petition has been filed alleging willful disobedience of the order dated 01st June, 2018 passed by the Division Bench of this Court in *LPA No. 318/2018*. By the said order, the Division Bench had given liberty to the petitioner herein to urge the issue regarding justification and relevancy of the additional documents produced during the enquiry proceedings against the petitioner, that were not part of the charge sheet. It was directed that if such arguments were raised by the petitioner, the same would be addressed by the respondent no.1-Enquiry Officer and specific findings would be rendered therein.
2. As per the petitioner, the respondent no.1-Enquiry Officer did not deal



with the grounds urged by him pertaining to the production of additional documents before the respondent no.1-Enquiry Officer. On the one hand, the Enquiry Officer observed that he was not inclined to consider the additional documents, while on the other hand, the same have been considered in the final Enquiry Report. The objections raised by the petitioner regarding the additional documents were not decided by the respondent no.1-Enquiry Officer. Hence, the present petition has been filed on the ground that the respondents have violated the order dated 01st June, 2018 passed by the Division Bench of this Court.

3. Learned counsel appearing for the petitioner has raised the following submissions:

3.1 The respondent has not considered the illegality committed by the Management Witness, i.e., MW-2, by producing fake documents during his deposition. There is no provision in the Conduct, Discipline and Appeal Rules, 1980 (“CDA Rules”) which entitles a witness to produce before the respondent no.1-Enquiry Officer fresh documents, which are not entered in the charge sheet.

3.2 As per the Rule 31(11) of the CDA Rules, production of oral or documentary evidence related to the charge sheet before the respondent no.1-Enquiry Officer, is done by the Disciplinary Authority alone. The production of new documents by the Management Witness unrelated to the charge sheet, is beyond the jurisdiction of the respondent no.1-Enquiry Officer.

3.3 Pursuant to the order dated 01st June, 2018 passed by the Division Bench, the petitioner sent a communication to the respondent no.1-Enquiry Officer to decide the issues raised by him regarding the additional



documents. In response thereto, the respondent sent reply dated 20th August, 2018 and informed the petitioner that the issues raised by him regarding the additional documents, shall be discussed in the Enquiry Report.

3.4 In view of order dated 01st June, 2018, the respondent no.1-Enquiry Officer was enjoined upon to give specific findings relating to the justification and otherwise with respect to the production of such additional documents, which were not part of the charge sheet. The Enquiry Officer did not deal with the grounds urged by the petitioner before him.

3.5 On the one hand, the respondent no.1-Enquiry Officer has observed that he is not inclined to consider these additional documents. However, the respondent no.1-Enquiry Officer has conveniently considered the said documents while considering the charges against the petitioner, which is evident from noting the statement of MW-2 in respect of Charge No. 2, which clearly discusses the audio clipping, i.e., MWE-3.

3.6 The respondent no.1-Enquiry Officer has not addressed the issues raised by the petitioner and no finding has been given by him in respect of the additional documents submitted by the Management Witness during his deposition, which were not related to the charge sheet.

3.7 Vide order dated 01st June, 2018, the Court had permitted the petitioner to cross-examine the witness regarding veracity and genuineness of such documents. However, during the cross-examination, when the petitioner asked questions to the witness, the Presenting Officer of the Management raised objection each and every time, which objection was accepted by the respondent no.1-Enquiry Officer. Thus, the petitioner was not given proper opportunity to question veracity and genuineness of the documents produced by the Management Witness.



4. Per contra, learned counsel appearing for the respondent submitted as follows:

4.1 The orders passed by this Court have been followed scrupulously and no contempt has been committed.

4.2 The respondent no.1-Enquiry Officer has not considered the three exhibits, i.e., MWE-1, MWE-2 and MWE-3 while arriving at his findings and has not taken cognizance of the same.

4.3 Opportunity was granted by the respondent no.1-Enquiry Officer to the petitioner to cross-examine the witness on the additional documents, in accordance with the direction given by this Court in order dated 01st June, 2018, which opportunity was availed of by the petitioner.

4.4 The respondent no.1-Enquiry Officer has taken full cognizance of the petitioner's objections to the said documents in his Enquiry Report and has examined the charges levied against the petitioner, without taking into account, the said documents.

4.5 The earlier contempt petition being *CONT.CAS(C) No. 753/2018*, was dismissed as withdrawn, without seeking or obtaining leave of the Court to file fresh contempt petition on the same cause of action. The petitioner has, thus, abused the process of law by filing the present petition.

5. I have heard learned counsels for the parties and have perused the record.

6. Facts on record show that the petitioner was issued charge sheet dated 20th May, 2016, pursuant to which the respondent no.1 was appointed as Enquiry Officer. The petitioner filed a writ petition being *W.P.(C) No. 8835/2017* to quash the said charge sheet. The said petition was dismissed by order dated 27th September, 2017, thereby holding that since the



disciplinary proceedings were in progress, challenge to the charge sheet was not permissible at that stage. The appeal against the said order being *LPA No. 703/2017* was dismissed as withdrawn vide order dated 17th November, 2017.

7. During the course of the enquiry proceedings, a Management Witness, MW-2, during his cross-examination produced two letters exhibited as MWE-1 and MWE-2 and an audio clipping as exhibit MWE-3, in support of his statement that he had been receiving complaints against the petitioner at regular intervals. The said documents were not amongst the documents originally annexed to the charge sheet.

8. The petitioner challenged the admissibility of the said documents produced by the aforesaid witness in the enquiry proceedings, by filing writ petition being *W.P.(C) No. 1750/2018*. The said writ petition was disposed of vide order dated 23rd February, 2018 by holding that since the enquiry against the petitioner was in progress, the evidentiary value of the said documents will be considered by the respondent no.1-Enquiry Officer at the conclusion of the enquiry. The order dated 23rd February, 2018 passed in *W.P.(C) No. 1750/2018* reads as under:

“1. Impugned order of 10th January, 2018 (Annexure P-1) rejects petitioner’s Representation of 29th November, 2017 (Annexure P-2) wherein specific plea taken is that the documents as referred to in paragraph No.2 of the Representation do not form part of the charge sheet and are not included in the list of documents.

2. Impugned order notes that though these documents have not been mentioned in Annexure III of the charge sheet, but it is clearly stated in the said Annexure that “any other document(s) considered necessary during the course of departmental inquiry proceedings” can be duly presented by the prosecution.

3. The inquiry against petitioner is in progress. What would be the evidentiary value of these documents and whether these documents are admissible or not and as to whether they can be relied upon or not



is not required to be considered by this Court in exercise of jurisdiction under Article 226/227 of the Constitution of India. These aspects have to be considered by the Inquiry Officer at the conclusion of the inquiry.

4. In view of the aforesaid, this petition and application are disposed of with liberty to petitioner to raise the pleas taken in this petition, before the Inquiry Officer."

9. Against the aforesaid order, the petitioner filed appeal being *LPA No. 318/2018*, which came to be disposed of by order dated 01st June, 2018, in the following manner:

"The appellant is aggrieved by an order of learned Single Judge who declined to grant substantive relief even though an important aspect of this relief was recognized and provided for in the impugned order. The appellant had urged that the production of additional documents by a management witness in the course of departmental inquiry was beyond the scope of jurisdiction of the domestic tribunal/inquiry officer. Learned counsel for the appellant urged that the inquiry was limited to the charges levelled against alleged delinquent employee, and confined to the documents mentioned in the charge-sheet and supplied to him. In these circumstances, the production of fresh material could not be countenanced. The learned Single Judge quite correctly in our opinion permitted the appellant to cross-examine the witnesses who produced the documents. It was open to the appellant therefore to question the witnesses as to the veracity and genuineness of such documents. Thereafter the appellant is at liberty to urge the ground relevant to the issue i.e. the justification or otherwise under rules or concerned standing orders/regulations with respect to the production of such additional documents which were not part of the charge-sheet, during the course of the inquiry by the management witnesses as well as their genuineness. If such arguments are made the inquiry officer would address himself to those issues and render specific findings. Rights and contentions of the parties are reserved. Appeal is disposed of in the above terms. Pending application also stands disposed of.

Order dasti under signatures of the Court Master."

10. Perusal of the aforesaid order dated 01st June, 2018 demonstrates that the petitioner herein was permitted to cross-examine the witnesses who



produced the documents and to also question the witnesses as regards the veracity and genuineness of such documents. Further, the petitioner was also granted liberty to raise the issue regarding the justification of production of such additional documents which were not part of the charge sheet. It was held by the Division Bench that if such issues were raised by the petitioner, the said issues would be addressed by the Enquiry Officer.

11. Subsequent to the passing of the aforesaid order dated 01st June, 2018, the petitioner moved an application being *CM No. 35083/2018* praying for directions to the Enquiry Officer to decide the objections raised by the petitioner in his representation dated 24th July, 2018, as per the direction contained in order dated 01st June, 2018. The said application was disposed of vide order dated 31st August, 2018, by holding as follows:

“CM No.35083/2018 (direction)”

This is an application filed by the appellant in an appeal which was disposed of on 01.06.2018. Reliance is placed on the following portion of the order which was passed on 01.06.2018.

“it was open to the appellant therefore to question the witnesses as to the veracity and genuineness of such documents. Thereafter the appellant is at liberty to urge the ground relevant to the issue i.e. the justification or otherwise under rules or concerned standing orders/regulations with respect to the production of such additional documents which were not part of the chargesheet, during the course of the inquiry by the management witnesses as well as their genuineness. If such arguments are made the inquiry officer would address himself to those issues and render specific findings. Rights and contentions of the parties are reserved. Appeal is disposed of in the above terms. Pending applications also stands disposed of.

Order dasti under signatures of the court Master.”

The complaint of the appellant/applicant is that the Inquiry officer has not complied with the directions so passed.

Mr. Koura, counsel appearing for the respondent No.1/IOCL on an



advance copy, submits that the inquiry has been concluded however the appellant has not filed his written submissions and post the filing of the written submissions, the final order would be passed. Mr. Koura further submits that the Inquiry Officer would certainly take into account the observations made by the Court in its order dated 01.06.2018.

In view of the stand taken, Mr. Sinha, counsel for the appellant submits that no further orders are required to be passed, however, he seeks liberty to raise such grounds available to him in case, the order dated 01.06.2018 is not complied with by the Inquiry Officer.

As prayed, 15 days time is granted which is not opposed by the respondent to the appellant to file the written submissions.

The application is disposed of.

Dasti, as prayed.”

12. Subsequently, the respondent no.1-Enquiry Officer submitted Enquiry Report dated 28th September, 2018. Perusal of the Enquiry Report shows that the Enquiry Officer allowed the petitioner herein to cross-examine the concerned witness with respect to the additional documents. Further, considering the objections raised by the petitioner, the Enquiry Officer held that he was not inclined to consider the said additional documents. The relevant portion of the Enquiry Report dealing with the issue regarding the admissibility of the additional documents, is extracted as below:

“xxx xxx xxx

Significance / admissibility of MWE 1 / MWE 2 / MWE 3 & MWE 3a

During the inquiry proceedings MWE 1, MWE 2, MWE 3 (Audio Clipping), & MWE 3a (transcript of MWE 3) were submitted by MW 2 during his examination in support of his statement that he has been receiving complaints against Shri Narendra Yadav. The said exhibits are:

(a) MWE-1: Complaint dated 12.11.2016 made to Depot Manager, Mathura by some Jawahar Singh of Mathura alleging that Shri Narendra Yadav is taking money for increase the validity of green card and for checking Tank Trucks.



(b) MWE-2: Complaint dated 23.11.2016 made by M/s Essar Energy to Ch. Terminal Manager alleging that money is required to be paid to Shri Narendra Yadav for issuance of green card.

(c) MWE-3: An audio clip along with its transcript wherein it is a conversation amongst Sh. Sudhir Gupta, CTM, MMT, Sh. K.S. Chaudhary, SM (RC), MMT & Sh. K.P. Singh as regard money taken by Sh. Narendra Yadav for the green card date extension / updation and in the later part of the clip SH PC Chaudhari SM (F), MMT, Sh. Ankit Gupta, AM (RC), Rishabh Bhatia, DM (RC), MMT and driver Sh. Rajinder alias Raju confessing that he had given money to Sh. K.P. Singh for extension of green card date for TT No 9996. The transcript of the same was given by PO as MWE 3a and later by CSE himself as CE 25.

Shri Yadav has disputed these documents since the time of their production during the inquiry proceedings and has made representations on the admissibility of these exhibits including approaching Hon'ble High Court of Delhi more than once.

In its order dated 01.06.2018 the Hon'ble High Court of Delhi has ordered that based on the arguments of the CSE over the issue of these exhibits the Enquiry Officer will address the issue and render specific findings. The operating part of which is as quoted below:

Quote:

.....The learned Single Judge quite correctly in our opinion permitted the appellant to cross-examine the witnesses who produced the documents. It was open to the appellant therefore to question the witnesses as to the veracity and genuineness of such documents. Thereafter the appellant is at liberty to urge the ground relevant to the issue, i.e. the justification or otherwise under rules or concerned standing orders/regulations with respect to the production of such additional documents which were not part of the charge-sheet, during the course of the inquiry by the management witness as well as their genuineness. If such arguments are made the inquiry officer would address himself to those issues and render specific findings.....

Unquote

xxx xxx xxx

In line with the order of Hon'ble Court However, CSE has cross examined the concerned Witness over these exhibits i.e. MWE-1, MWE-2 & MWE-3. In fact, CSE himself submitted the transcript of MWE 3 as exhibit CE 25.



However, even though the exhibits have been cross examined by the CSE and during cross examination the CSE could not establish that MWE 1 & 2 are not genuine, it has been observed that MWE 1 was dated 12.11.2016 i.e. prior to the date of occurrence of charge 1 & MWE 2 is dated 23.11.2016 i.e. post the date of occurrence of incident and both the exhibits are not directly related to the charge 1 & 2 which clearly stated the date of occurrence as 17.11.2016. MWE 3 is again an audio clipping submitted in support of his statement by MW 2. Moreover, the documents being presented by witness and not by PO during the inquiry proceeding. In view of the reasons stated above, I am inclined not to consider these three exhibits i.e. MWE-1, MWE-2 and MWE-3 while arriving at my findings. Accordingly, these exhibits have not been taken into cognizance while arriving at the findings on the charges.

xxx xxx xxx”

13. Thus, it is clear that in compliance to the directions issued by this Court, the petitioner was granted due opportunity to cross-examine the Management Witness as regards the additional documents produced during the course of enquiry. Further, the objections raised by the petitioner were duly considered by the Enquiry Officer. Therefore, it is manifest that the respondent no.1 has complied with the directions issued by this Court.

14. Once the directions passed by the court are substantially complied with, there is no occasion for this Court to proceed in contempt against the respondent. This Court in contempt proceedings will not go into exhaustive evaluation in order to assess the rightness or wrongness of the procedure adopted by the Enquiry Officer. Once it is perceptible that the order passed by the court has been complied with on the whole, merely because the petitioner perceives compliance of the order in a different manner, will not make out any case for contempt against the respondent.

15. Thus, Supreme Court in the case of ***Bihar State Government Secondary School Teachers Association Versus Ashok Kumar Sinha and***



Others, (2014) 7 SCC 416 has held as follows:

“xxx xxx xxx

*24. At the outset, we may observe that we are conscious of the limits within which we can undertake the scrutiny of the steps taken by the respondents, in these contempt proceedings. **The Court is supposed to adopt cautionary approach which would mean that if there is a substantial compliance with the directions given in the judgment, this Court is not supposed to go into the nitty-gritty of the various measures taken by the respondents. It is also correct that only if there is wilful and contumacious disobedience of the orders, that the Court would take cognizance. Even when there are two equally consistent possibilities open to the Court, case of contempt is not made out.....***

xxx xxx xxx”

(Emphasis Supplied)

16. It is also pertinent to note that the petitioner had raised similar objections in a previous contempt petition being *CONT. CAS. (C) No. 753/2018*. The prayer in the said contempt petition was similar to the prayer as raised in the present petition. Prayer made in the present petition reads as under:

“(i) To initiate Contempt of Court proceedings against the respondent for willful disobedience of the order dated 01.06.2018 passed in LPA No. 318 of 2018 by this Hon'ble Court and punish him in accordance with law.

(ii) pass such other or further order as this Hon'ble court may deem fit & proper in the facts and circumstances of the case.”

17. Prayer made in the earlier contempt petition being *CONT. CAS (C) No. 753/2018*, reads as under:

“(i) To initiate Contempt of Court proceedings against the respondent for willful disobedience of the order dated 01.06.2018 passed in LPA No. 318 of 2018 by this Hon'ble Court and punish him in accordance with law.

(ii) pass such other or further order as this Hon'ble Court may deem fit & proper in the facts and circumstances of the case.”



18. The earlier contempt petition was dismissed as withdrawn vide order dated 03rd October, 2018, with the following observations:

“After lengthy arguments, Mr. Barun Kumar Sinha, learned counsel appearing on behalf of the petitioner seeks leave to withdraw this petition, with liberty to raise all the legal issues raised in the present petition, in relation to the subject domestic enquiry, in appropriate proceedings, in accordance with law, once the same is culminated into a final order, rendered by the Disciplinary Authority.

Leave and liberty granted.

The petition is dismissed as withdrawn and disposed of accordingly.”

19. Perusal of the aforesaid prayers and order dated 03rd October, 2018 show that the petitioner had filed similar contempt petition with similar prayer at earlier point of time which was withdrawn with liberty to raise all legal issues in relation to the subject domestic enquiry in appropriate proceedings, in accordance with law.

20. This Court also takes notice of the fact that the petitioner has already challenged the findings of the Enquiry Officer in a writ petition, being, W.P.(C) No. 9415/2020, which is listed for hearing on 15th July, 2024. Thus, the grievance of the petitioner, as regards the findings given by the Enquiry Officer in his Report, would constitute fresh cause of action, which the petitioner has already availed by filing the aforesaid writ petition.

21. In view of the aforesaid detailed discussion, the present petition is found devoid of any merits and is accordingly dismissed, along with the pending application.

**(MINI PUSHKARNA)
JUDGE**

APRIL 16, 2024/au/kr